Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
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Comments of the North Dakota Association of Telecommunications Cooperatives

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Introduction

The North Dakota Association of Telecommunications Cooperatives ("NDATC") respectfully submits its comments in response to the *Further Notice* in the above-captioned proceeding.[1] The NDATC represents 18 small rural local exchange cooperatives and companies collectively providing local exchange service to ninety-six percent of the geographic area of the state of North Dakota—an exceptionally low density, high-cost state from a telecommunications perspective.[2]

Members of the NDATC have maintained affordable local rates despite substantially higher than average per unit costs by relying, in part, on interstate and intrastate access charges that other carriers pay for use of NDATC member networks.[3] As such, a movement to "bill-and-keep" or a unified intercarrier compensation regime based on the lowest denominator of the rates currently in use will have a disproportionate impact on the majority of telephone subscribers in

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[1] *Development of a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking* (FCC 05-33, rel. March 3, 2005) ("*Further Notice*").

[2] The members of the North Dakota Association of Telecommunications Cooperatives are: Absaraka Cooperative Telephone Company; BEK Communications Cooperative; Consolidated Telcom Cooperative; Dakota Central Telecommunications Cooperative; Dickey Rural Telephone Cooperative; Griggs County Telephone Company, Inter-Community Telephone Company; Midstate Telephone Company; Moore and Liberty Telephone Company; Nemont Telephone Cooperative; North Dakota Telephone Company; Northwest Communications Cooperative; Polar Communications Cooperative; Red River Rural Telephone Association; Reservation Telephone Cooperative; SRT Communications Cooperative; United Telephone Mutual Aid Corporation; and West River Telecommunications Cooperative.

[3] The other principle sources of revenue are end user charges (local rates, Federal subscriber line charges ("SLCs") and Federal universal service support. The state of North Dakota does not have a state universal service fund.

North Dakota. These proposals would expose most North Dakota local telephone customers to unaffordable increases in local phone rates and reduced levels of service quality. In addition, proposals to eliminate or substantially reduce access revenues of small rural carriers would result in the inability of rural subscribers to gain access to new services, as technology evolves and higher capacity networks become indispensable to all communications.

Despite the harms that could come to small rural companies and their subscribers as a result of extreme reductions in access revenues, the NDATC acknowledges that the transformation in the telecommunications industry renders the overhaul of the intercarrier compensation system inevitable. The prevalence of wireless communications and the emergence of VoIP services that claim exemption from access charges despite their use of local networks, have created arbitrage opportunities that have begun to erode access revenues. However, the Commission must carefully consider and plan for the impacts that reductions in access revenues will have on the ability of NDATC members and other small rural carriers to continue to offer affordable local telephone service to customers residing in the most rural, costly-to-serve areas.

I. NDATC Members Would Be Disproportionately Harmed By a Movement to a Unified Rate Regime That Severely Reduces Access Charges

The record is replete with descriptions of the typical low density, high-cost markets served by rural local exchange carriers. Customers in rural areas are more dispersed and more costly to serve. These factors are extenuating in the case of NDATC members, who face a sparsely settled state with a declining population.

The United States Census Bureau estimates in 2003 that only 633,837 people lived in North Dakota, 8363 fewer than in 2000. The 2000 census revealed that 47 of the State’s 53 counties lost population from the 1990 census. One out of three North Dakotans live in the six counties adjacent to the Minnesota border. Outside of this more concentrated area, rural customers are spread uniformly throughout North Dakota, as is telecommunications infrastructure, because the state was initially settled in 160-acre “Homestead-Act” tracts.

NDATC Members serve the most rural parts, which encompasses 96% of the state’s 7704 square miles. Yet, eight of the ten largest cities in North Dakota are located in the four percent of the state that NDATC members do not serve.[4]

One factor that provides some measure of just how dispersed subscribers are in rural markets is the density per square mile of a carrier’s serving area. The National Telecommunications Cooperative Association (“NTCA”) states that, on average, non-rural local exchange companies in the United States serve territories with average densities of 128 subscribers per square mile and, by comparison, rural local exchange carriers in the United States, on average, serve territories with densities of 19 subscribers per square mile.[5] Members of the NDATC represent some of the extreme low densities used to produce the statistics relied on by NTCA -- NDATC members serve areas where on average there exist only 1.9 subscribers per square mile.[6]

In addition, rural carriers average far fewer lines per switch--a result of greater population dispersion. The number of lines served by a carrier’s switch is an indicator of the general cost to serve the area because a local switch represents a significant fixed cost investment. To the extent the costs of a switch can be spread over an increased number of lines up to the working capacity of the switch, economies of scale are reached. Local switches deployed in non-rural exchange areas in the United States serve on average 7188 lines, while local switches deployed in rural

[4] Fargo, the largest city in North Dakota and served by Qwest, has a population of 90,599. The tenth largest city in North Dakota, Wahpeton, has a population of only 8586.

[5] *Bill and Keep; Is it Right for Rural America?*, March 2004 at p. 13 (*NTCA White Paper*), attached to Letter from Scott Reiter, Sr. Telecom Specialist of the National Telecommunications Cooperative Association, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed March 10, 2004).

[6] The average number of subscribers per square mile in NDATC member territory is 1.9, based on an average of individual data points provided by NDATC members responding to a survey. If subsidiaries of NDATC members are included in the data, the average number of subscribers per square mile is 3.3.

exchange areas in the United States only serve on average 1254 access lines.[7] In comparison, the average local switch deployed by the members of the NDATC serves only 484 access lines, a third the number of lines served by the average rural local exchange company.[8] Therefore, NDATC members can reach fewer economies of scale with regard to each switch deployed, in comparison to typical *rural* companies.

In addition, rural customers are generally poorer than urban customers.[9] The median per capital income for North Dakotans in 1999, was 17% lower than the national average.[10] Rural customers receive fewer services for each dollar spent on local telephone service because their calling scopes are smaller than the calling scopes of non-rural customers. This means, for the same dollars, rural customers can reach far fewer individuals than their urban counterparts without incurring toll charges. The comparatively low number of access lines served on average by NDATC members' local switches underscores that North Dakota residents have extremely small local calling scopes when compared to their urban counterparts. To the extent that local rates charged to rural subscribers are comparable to local rates in urban areas, intrastate access revenues generated from higher-than-average numbers of toll calls facilitate these affordable rates.[11]

Despite the severely high costs of maintaining networks that serve customers residing in rural North Dakota, most of NDATC's members have made network investments that enable customers to receive broadband service over DSL, fiber to the home and other means to 275

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[7] *NCTA White Pape*r at p. 13.

[8] 484 access lines per switch is a weighted average of data points provided by NDATC members who responded to a survey—this figure does not include NDATC member subsidiaries that tend to serve the more dense areas. Including all NDATC members and their subsidiaries that receive universal service support, the weighted average number lines per local switch is 929.

[9] *NTCA White Pape*r at pp. 15-16.

[10] The 1999 median per-capita income was $21,587 for the United States. *See* U.S. Census Bureau data at http://quickfacts.census.gov/qfd/states/38000.html

[11] *NCTA White Paper* at p. 18.

communities. Because cable television service is generally only available within municipalities, rural subscribers would be without broadband access except for the broadband capacity provided by NDATC member networks. This broadband capability would not be available to rural subscribers without the infrastructure supported by access charges.[12]

For all of the reasons stated above, the NDATC provides a unique voice in this proceeding, representing rural carriers providing quality local phone service to extremely high-cost areas of the United States. Members of the NDATC, who rely heavily on access revenues to keep local rates affordable, are likely to be the most impacted by any proposed plan, such as bill-and-keep, that targets the elimination or severe reduction of access revenues. This Commission should carefully consider the special needs of small rural local exchange carriers in redressing the current state of intercarrier compensation.

II. The New Intercarrier Compensation Mechanism Must be Carefully Designed to Prevent Disproportionate Harm to North Dakota Consumers and the Members of the North Dakota Association of Telecommunications Cooperatives

A. Most Proposals Referenced in the Notice Set Intercarrier Compensation Rates at Zero or at Rates That Are Drastically Low In Comparison to Existing Rates

Many proposals propounded in this proceeding, including proposals advocated by EPG, ARIC, the two RLECs, and the CBICC, call for a unified cost-based rate for the termination of traffic, irrespective of jurisdiction (interstate or intrastate), type of carrier (LEC IXC, CMRS, VoIP) or the nature of the service (voice/data).[13] The NDATC agrees that a unified approach directed at treating equivalent services similarly would rationalize the system of compensating

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[12] The FCC has recognized the relationship between well-supported rural networks and potential broadband capacity. *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* 16 FCC Rcd 11244, 1322 (2001) (*Rural Task Force Order*).

[13] Cost-Based Intercarrier Coalition, Sept. 2, 2004 (*CBICC Proposal*), attached to Letter from Richard Rindler, Counsel for the Cost-Based Intercarrier Compensation Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 2, 2004).

local telephone companies for use of their networks and curb network abuses resulting from regulatory arbitrage opportunities. However, the NDATC is concerned that some of the circulating proposals, if adopted, would have a disproportionately severe impact on North Dakota consumers, NDATC members and similarly situated rural carriers.

In earlier phases of this proceeding, many commenting parties brought to light the fallacies inherent in the various bill-and-keep proposals propounded in this rulemaking. Members of the NDATC agree with parties that claim that the adoption of a bill-and-keep compensation system for all carriers is unlawful given the language provided in Section 252 of the Communications Act, as amended.[14] NDATC also agrees with advocates who claim that adoption of a bill-and-keep regime would simply create counterparts to the regulatory arbitrage that the movement to a bill-and-keep regime sought to avoid, such as irrational incentives to build networks that prematurely hand-off calls. Yet, NDATC, a group representative of the smallest of rural telephone carriers serving some of the highest-cost areas in the nation, is extremely concerned that the adoption of a bill-and-keep regime is the equivalent of the adoption of a unified intercarrier compensation rate of zero.

Bill-and-keep, as a method of compensating carriers for use of their networks, makes intuitive sense when the carriers involved face similar network costs and exchange equal amounts of traffic. Congress recognized the appropriateness of a voluntary bill-and-keep option for carriers who experience these circumstances to avoid the transactions costs associated with tracking and billing network use of approximately equivalent amounts.[15] However, the circumstances surrounding small rural telephone companies could not be farther from those

[14] Section 252(d)(2)(b), which permits bill-and-keep arrangements in limited circumstances when parties mutually agree, requires as a prerequisite a “mutual recovery of costs” for transport and termination. Where there is a material imbalance of traffic such as the usual case where a wireless carrier relies on a Rural LECs high cost network to terminate calls to rural customers, no mutual recovery of costs is possible.
[15] *Id.*

associated with the niche defined by Congress for when a bill-and-keep mechanism would be appropriate.

The adoption of a bill-and-keep regime would result in rate-shock to NDATC members and their customers. Rural networks are inherently more costly than non-rural networks and traffic patterns are not usually balanced, placing rural carriers and their customers at a severe disadvantage. Arguably, bill-and-keep would be less of a shock to non-rural LECs who face lower network costs and more balanced traffic exchanges from which compensation from other carriers for use of their networks currently comprises a much smaller proportion of their cost recovery. The devastating impact that bill-and-keep would impose on the customers of NDATC members would not be tempered by a transition period. An end-game of bill-and-keep will cause rural carriers to cease investing in networks today in anticipation of a bleak future.

Moreover, the adoption of an intercarrier compensation regime that included a bill-and-keep component would hamstring network investments necessary to deploy broadband. This Commission, in the *Rural Task Force Order*, recognized the importance of rural carrier investment in infrastructure capable of providing access to advanced services.[16] Compensation for use of a rural carrier's network at a rate of zero would force rural local exchange carriers to downgrade service quality and reduce future broadband deployment. Degradation and failure to invest in rural carrier networks would be further exacerbated by the overuse of the network invited by a bill-and-keep regime, whereby users are motivated by costless use of networks owned and maintained by others.

Bill-and-keep would disproportionately harm many NDATC members that have taken the initiative to upgrade their plant to enable future broadband communications by denying them the

[16] *Rural Task Force Order*, 16 FCC Rcd at 11322 (2001).

ability to recover the cost of these upgrades from users of their network. Failure to provide a fair compensation mechanism for these carriers with upgraded networks punishes them for broadband initiatives and dissuades other small rural carriers from making similar investments.

Although not bill-and-keep, other proposed plans for unifying intercarrier compensation are the equivalent to bill-and-keep in terms of the impact to North Dakota customers and NDATC members. For instance, the ICF Plan, despite its stated intentions to minimize the impact to small rural local exchange companies, provides a level of compensation that would have a comparable effect on subscribers as a "$0" rate. NDATC members have built their networks in reliance on access charges that average several cents per minute.[17] The ICF's unified rate of $.000175 would not protect rural subscribers from unaffordable rate increases.

Failure to permit the application of charges to those carriers and their customers who utilize rural networks to originate and terminate telecommunications will inevitably lead to excessively high local rates or excessive cost recovery from alternative sources. This Commission should not adopt an intercarrier compensation mechanism that includes a bill-and-keep component or any similar system that resets network access charges at or inappropriately close to zero.

B. A Plan that Conforms with the Rural Alliance Principles Endorsed by ARIC and EPG Would Minimize the Negative Impacts on Small Rural Carriers Associated with Rate Unification

The NDATC comprehends the need for reform of the existing intercarrier compensation mechanism yet emphasizes that the Commission must minimize the impact of a unified rate plan on the local rates paid by North Dakota consumers for rural telephone service, as well as the

[17] *See generally* Regulatory Reform Proposal of the Intercarrier Compensation Forum, October 5, 2004 (*ICF Proposal*), attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Tab A (filed Oct. 5, 2004).

need for North Dakotans to have access to affordable advanced services. The NDATC commends the groups that have represented the needs of rural consumers to date in this proceeding and states its endorsement of some of the joint policy goals articulated by the Alliance for Rational Intercarrier Compensation ("*ARIC*") and the Expanded Portland Group ("*EPG*").[18]

First, consistent with the concerns articulated herein, any unified intercarrier compensation mechanism must enable rural local exchange carriers to recover compensation for originating or terminating use of their network based on actual cost. A bill-and-keep regime is clearly at odds with this simple principle that users of the network should pay based on the cost of their use. The principle that the retail carrier pays other carriers for use of their networks should be maintained.

Second, any unified intercarrier compensation mechanism must ensure a compensation mechanism that continues to contribute to affordable basic telephone rates and universal service to all Americans. The Commission must strive in its policy making for an appropriate balance of cost recovery for rural carriers based on end-user revenues, intercarrier compensation payments and universal service. Excessive reliance on any one of these three cost recovery sources could prove detrimental to rural customers. If access charges are substantially reduced, end-user charges must necessarily grow to unaffordable levels or rural customers will receive substantially lower-grade telecommunications service. However, if reasonable levels of access revenues are maintained, and other sources such as universal service support are available, rural companies can continue to provide the benefits to rural subscribers and ensure access to new technologies.

[18] *See generally, Joint Statement of the Alliance for Rational Compensation and the Expanded Portland Group*, attached to Letter from Glen H. Brown and Ken Pfister, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket 01-92 (filed Dec. 8, 2004). The NDATC emphasizes the important contributions the NTCA has made to the record in this proceeding to establish the unique characteristics of the territories served by rural carriers and the needs of rural carriers with respect to intercarrier compensation reform.

Finally, any unified intercarrier compensation mechanism must address the emergence of broadband and other technologies. The ability of rural carriers to recover costs for use of their networks has a direct impact on their ability to invest in robust networks that will be able to carry tomorrow's data traffic.

Conclusion

For all of the reasons stated above, this Commission should carefully consider and plan for the impacts that reductions in access revenues will have on the ability of NDATC members and other small rural carriers to continue to offer affordable local telephone service to customers residing in the most rural, costly-to-serve areas.

Respectfully submitted,

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